Supreme Court, U.S.
FILED

94 976 NOV 7 1994

NO. OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

FRANCES S. NORRIS,

PETITIONER,

VS.

OKLAHOMA CITY UNIVERSITY, AND
OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW,

RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI, AMENDED,
TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT. AC-No.93-16647

PETITION FOR WRIT OF CERTIORARI

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48 pp

QUESTIONS PRESENTED

1. Is specific jurisdiction reasonable when based on libel in three transcripts that out-of-state schools purposefully directed into the forum state.

2. Is specific jurisdiction over out-of-state schools reasonable when based on libel in transcripts they purposefully directed at the forum state,

even though the plaintiff-student asked said schools to send transcripts to the forum state.

3. Is the brunt of reputational injury by libel located in the State where the libel has its greatest circulation,

even though the person whose reputation the libel injures is not present when the libel is circulated there.

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PRECEDING OPINIONS

(1). Appendix A is the judgment and order of District Court of the Northern District of California in #C93-1626, filed August 3, 1993, which dismissed for lack of personal jurisdiction, denied leave to amend complaint and was silent on plaintiff's motion for summary judgment.

(2). Appendix B is the order of Court of Appeals for the Ninth Circuit Panel in No.93-16647, filed on April 12, 1994, which affirmed dismissal for lack of jurisdiction,denial of leave to amend, and was silent on motion for summary judgment.

(3). Appendix C is the order of Court of Appeals for the Ninth Circuit Panel,#93-16647, filed on October 26, 1994, which denied petition for rehearing and rejected suggestion for rehearing en banc.

GROUNDS FOR JURISDICTION

The Supreme Court has jurisdiction under 28 U.S.C. 1254(1). The court of appeals had jurisdiction under 28 U.S.C.

sec.1291. 28 U.S.C. 1331 gave the district court jurisdiction.

California Court Rule 28 (b) provides that "a party seeking review must serve and file a petition within 10 days after the decision of the Court of Appeal becomes final as to that court...". Here, petition is timely filed within ten days of final judgment made October 26,1994.

LEGAL FACTS

"A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state, or of the United States."
Cal.Civ.Proc.Code *sec*.410.10.

The Ninth Circuit uses the "effects" test to find basis for jurisdiction over one whose "only contact with the forum state is the purposeful direction of a foreign act having effect in the forum state." Haisten v.Grass Valley Medical Reimbursement Fund,784 F.2d 1392,1397 (9th Cir. 1986) (emphasis in original), (citing

Calder v.Jones, 104 S.Ct. 1482,1487 (1984).

The Ninth Circuit uses a three prong test to determine reasonableness of specific jurisdiction. See, Brainard v. U.of Alberta, 873 F.2d 1257,1259 (9th Cir.1989) citing Lake v.Lake, 817 F.2d 1416, 1421 (9th Cir.1987) citing Calder v.Jones, 104 S.Ct.1482, 1486-87 (1984).

The first prong requires that the nonresident must either purposefully direct his activities at, or consummate some transaction with, the forum or resident thereof; or, perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws. The second prong requires causal nexus between the nonresident's contact and the plaintiff's claim. The third prong requires that jurisdiction be reasonable. Id.

In the Ninth Circuit, "purposeful

direction" of an intentional tort at the forum state is grounds for jurisdiction. Brainerd v.University of Alberta,873 F.2d 1257 (9th Cir.1989)(libel is grounds); Lake v.Lake, 817 F.2d 1416 (9th Cir.1987); Haisten v. Grass Valley Med.Reimbursement Fund, Ltd., 784 F.2d 1392 (9th Cir.1986). See also, Hugel v McNell, 886 F.2d 1,5 (1st Cir.1989); First Am. First v. Nat'l Association Bank Women, 802 F.2d 1511 (4th Cir.1986); Brown v. Flowers, 688 F.2d 328, 332 (5th Cir.1982); In Flight Devices v. Van Dusen Air,Inc.,466 F.2d 220,235 (6th Cir. 1972); Heritage House v.Continental Funding, 906 F.2d 276(7th Cir.1990).

In libel, the first-prong test is met when the (1) intentional act of libel (2) is expressly aimed at the forum state (3) and causes harm, the brunt of which is suffered--and which the defendant knows is likely to be suffered--in the forum state. Core-Vent Corp.v. Nobel Industries, Inc., 11 F.3d 1482, 1486 (9th Cir.1993), citing

Calder v.Jones, 104 S.Ct.1482,1487 (1984).

One knows the brunt of reputational harm is likely to occur in the forum state for either of two reasons, (1) negative effects on the plaintiff's reputation would mostly be suffered there; and (2) circulation of libel is greatest there. Id.

STATEMENT OF CASE AND MATERIAL FACTS

Petitioner Norris is a woman doctor who received MBA cum laude from respondent Oklahoma City University (OCU) in 1988. Until 1992, OCU refused Norris's requests to include high grades business professors gave her on her transcript.

Norris enrolled at Oklahoma City University Law School (OCULS) in 1988, studied fulltime for four years, and graduated in 1992. At least one law professor said OCULS required him to alter and lower grades he had given some students including Dr.Norris. OCULS put the altered false grades on her transcript.

Dr.Norris had given testimony that

helped enact Title IX's right of women to equal education. One law professor openly castigated Norris's activism. Law deans and some law professors generated a gender-biased milieu that obstructed Norris's legal education. After two years, Norris applied to three California law schools for admission as a transfer student. In 1990, she asked OCULS to send these three schools transcripts of her grades. Defendants sent transcripts they knew they had falsified by omitting high business school grades and by recording false low law school grades. The three California law schools did not admit plaintiff Norris. Plaintiff failed the California bar exam.

Petitioner Norris sued Respondents in federal district court in San Francisco, under federal law, 20 U.S.C. sec.1681 et seq., and state laws. Norris filed motion to amend and motion for summary judgment. Respondents did not dispute the facts.

The court held no hearing, dismissed

for lack of jurisdiction, denied leave to amend, and did not address motion for summary judgment. A three judge panel of the Ninth Circuit affirmed, specifically rejected lack of personal jurisdiction based on libel, denied leave to amend, did not address the motion for summary judgment, denied motion for rehearing, and rejected suggestion for rehearing en banc.

Plaintiff filed petition for certiorari with the court of appeals and mailed said petition to the Supreme Court on 4 November 1994.

REASONS TO GRANT:

The Supreme Court should hear this case to preserve uniformity of law set forth by the Supreme Court, Ninth Circuit and other Circuits, that specific jurisdiction based on purposefully-directed libel is reasonable.

The Court should hear this case to stop the pretext that students initiate libel in falsified transcripts by asking

schools to send transcripts. This procedural fiction disadvantages our pluralist nation in world markets where intelligence --not maleness or whiteness--wins. The U.S.loses competitive edge when traditionally biased colleges and universities, under umbrella of student-"initiation", evade judicial scrutiny of discriminatory libel that they expressly and purposefully direct out-of-state.

National loss is exemplified and evident, particularly from today's focus on healthcare complexities, in the loss of medicolegal potential that is apparent in Dr.Norris's powerful testimony for equal education under Title IX, and in her medical performance, several degrees, several languages, and history of selfless, effective patient-advocacy.

Discriminatory universities and colleges, exemplified by defendants OCU and OCULS, should no longer enjoy judicial deference. Their self-anointment drains

national strength.

(1) PURPOSEFULLY DIRECTED LIBEL IS GROUNDS FOR SPECIFIC JURISDICTION.

The courts below held that libel is insufficient basis for jurisdiction because libel is not "purposeful availment" of forum benefits. See,APP.A-III (C) at 10,11,(D) at 13 para. 3; and APP.B,n.2 at 8, citing Core-Vent, 11 F.3d at 1489 (purposeful interjection was insufficient "purposeful availment" for jurisdiction).

However,the first prong of the three-step Lake test for specific jurisdiction includes "purposeful direction" of intentional torts. See Brainerd, 873 F.2d at 1259 (9th Cir.1989) (libel meets the first prong test), citing Lake, 817 F.2d at 1423 (citing Calder, 104 S.Ct.at 1487).

Calder approved jurisdiction based on "purposeful direction" of libel, because the nonresidents' (1) intentional acts of libel (2) were expressly aimed at California,and (3) caused harm to plaintiff's

reputation, the brunt of which was likely to be suffered--and which defendants knew was likely to be suffered--in California. Calder v. Jones, 104 S.Ct.at 1486-87.

In Calder, the nonresidents had circulated libel nationwide. The Court inferred "purposeful direction" of libel at California from defendants' knowledge that brunt of harm would be in California. There were two reasons why they knew this. (1) They knew the plaintiff lived and worked in California and so would suffer the most reputational injury in the minds of people among whom she lived and worked. (2) They knew their diffusely circulated libelous newspaper had its greatest circulation in California. Calder, 104 S.Ct. at 1487.

Here in the instant case, libel was not diffusely circulated. Defendants OCU and OCULS expressly aimed libel at three schools in California. There are two reasons why Defendants knew the brunt of

reputational harm would be in California.

(1) They knew their libel, expressly aimed and mailed to three California schools, would have greatest circulation there.

(2) They knew the transcripts would, and did, damage Norris's scholastic reputation at the three specific schools to which Norris was seeking admission, among specific Californian academicians who did not admit Norris because admission required good scholastic reputations.

OCU and OCULS expressly aimed libel-by-transcript at California for the very purpose of injuring Norris's reputation in California.

Therefore, defendants' libel meets the test of the Ninth Circuit for "purposeful direction" of torts, because their (1) intentional acts of libel (2) were expressly aimed at three schools in California,and (3) caused harm to plaintiff's reputation, the brunt of which was likely

to be suffered--and which defendants knew was likely to be suffered- -in California. Accord, Brainerd v.University of Alberta, 873 F.2d 1257, 1259,(9th Cir.1989), citing Calder v. Jones, 104 S.Ct.at 1486-87.

THEREFORE, the Supreme Court should hear this case to reverse the erroneous decision below that libel is not grounds for personal jurisdiction because it is not "purposeful availment".

(2) DEFENDANTS INITIATED THEIR LIBEL.

The courts below held that defendants' libelous contact was not grounds for jurisdiction because student Norris initiated defendants' libel by asking them to send transcripts to California. See APP.(A)-III (D) at 13, para.3; see APP.(B) at 6. This view conflicts with decisions of the Supreme Court and Ninth Circuit.

The Supreme Court directly addressed initiation of a nonresident's forum contact in contract cases, see eg.,Burger King v.Rudzewicz, 105 S.Ct.2174, 2184

(1985), and indirectly addressed the "initiation" of a nonresident's tort in Calder v.Jones,104 S.Ct.1482 (1984). The Calder nonresidents' ***intent*** to direct a tortious act into California, and their ***intent*** to cause tortious injury in California, was dispositive grounds for personal jurisdiction.Id.n.6. In effect, a tortfeasor's ***intent*** "initiates" his tortious contact.

The Ninth Circuit distinguishes "initiation in contract from initiation in tort. Initiation in contract may or may not be grounds for jurisdiction depending on whether the nonresident's contact is attributable to himself or to the unilateral activity of another party. Roth v. Garcia Marquez, 942 F.2d 617,621 (9th Cir.1991) citing Haisten v. Grass Valley Med.Reimb.,784 F.2d 1392, 1397 (9th Cir. 1986)(citing Calder,104 S.Ct. at 1486-87).

But the intentional tort of libel is grounds for jurisdiction, even if it is "initiated" by another. Brainerd v. U. of

Alberta, 873 F.2d 1257, 1259, (9th Cir. 1989). In Brainerd, a nonresident defamed Professor Brainerd to someone who telephoned the nonresident from the forum state. The Ninth Circuit said his defamation was grounds for jurisdiction "even though he did not initiate the contact." Id. at 1259.

Here, the courts below decided that jurisdiction based on libel was not reasonable because student Norris asked defendants to send transcripts. This decision is erroneous because defendants' libel is grounds for specific jurisdiction "even though [they] did not inititate the contact. Accord, Brainerd, 873 F.2d at 1259.

ADDITIONALLY, the notion that libel is not grounds for jurisdiction because someone else "initiated" the libel erodes the due process rationale for minimum contacts, i.e., foreseeability of being sued in the forum. Burger King v. Rudzewicz, 105 S.Ct 2174, 2183 (1985).

Unforeseeability exists in effects of

contracts. But unforeseeability does not exist in intended effects of intentional torts like defamation. Accord. Calder v. Jones, 104 S.Ct.1482, 1486-87,n.6 (1984).

Here Defendants OCU and OCULS foresaw that they would cause brunt of scholastic reputational injury in California by aiming libel at three California schools. Their intention to cause foreseeable tortious injury in California was fair notice of possibile suit there.

Thus the Supreme Court should hear this case to reverse the erroneous decision below that defendant's libel was not basis for jurisdiction because plaintiff initiated it.

(3) INJURY BY LIBEL OCCURS WHERE LIBEL IS CIRCULATED.

Decision below was that defendants' libel was not grounds for jurisdiction because it caused brunt of injury in Oklahoma, not in California. See APP.(B) at 6,7. This view conflicts with Keeton

v.Hustler Magazine,Inc.,104 S.Ct.1473, 1479 (1984), and Jones v. Calder, 104 S.Ct.1486, 1486-87 (1984).

Reputational injury caused by libel occurs where it is circulated. Keeton, 104 S.Ct.at 1479, citing Restatement Second, Torts,sec. 577(a), Comment (a) (1977). Reputational injury caused by libel occurs where the libel is circulated regardless of the subject's presence or absence there. Keeton, 104 S.Ct.at 1481.

Calder's second rationale for localizing brunt of injury was location of circulation. There the libelous newspaper circulated throughout the nation. Brunt of injury occurred where circulation was greatest. Calder, 104 S.Ct at 1487.

Here, defendants OCU and OCULS circulated their libel-by-transcript at three specific law schools in California. The brunt of reputational harm by defendants' libel occurred where its circulation was greatest, i.e., at three law schools in

California. Accord, Brainerd, 873 F.2d at 1259-60, citing Calder, 104 S.Ct. at 1487.

Thus the Supreme Court should hear this case to reverse erroroneous conclusion below that libel circulated in California caused brunt of harm in Oklahoma.

CONCLUSION:

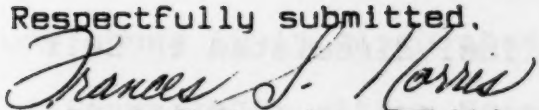
THEREFORE, the Court should hear this case for two reasons:

(1) to correct judicial error below in the interests of justice in this specific case, and in the interests of maintaining general uniformity of well-established law that it is reasonable to exercise jurisdiction over nonresidents who purposefully direct libel at the forum state, knowing that the libel would probably injure the plaintiff's reputation there, and knowing that the brunt of that injury would probably occur there; and

(2) to decide whether students unilaterally "initiate" libel by asking

their schools to send transcripts out of state.

Respectfully submitted,



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Ninth Circuit

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Final order, AC#93-16647,
United States Court of Appeals of the
Ninth Circuit

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Frances S.Norris,	)	
	)	JUDGMENT
	)	IN A CIVIL CASE
v	)	
	)	
Oklahoma City University et.al.	)	CASE NUMBER:
	)	#93-1626-VRW

XXX Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with this court's order of August 3, 1993, defendant's motion to dismiss for lack of personal jurisdiction is granted and the action is dismissed without leave to amend.

RICHARD W.WIEKING
Clerk

Filed August 3, 10:19 PM '93

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Frances S.Norris, Plaintiff,	)
v	) ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR LACK OF JURISDICTION.
Oklahoma City University	)
and	)
Oklahoma City University School of Law	)
Defendants.	)

File date August 3, 1993

Plaintiff, a 1992 graduate of defendant Oklahoma City University School of Law, asserts various causes of action stemming from her legal education. The complaint names the university and its law school as defendants. Plaintiff alleges federal question jurisdiction based upon defendants' alleged violation of 20 USC sec.1681-1688 ("Title 9"), as well as a multitude of pendant state law claims. The court however need not address the merits of plaintiff's claims because the court lacks personal jurisdiction over the defendant.

I

To obtain personal jurisdiction over defendants which are not served within the forum state, the court must conclude that the defendant is within the longarm jurisdiction statute of the forum state, and that such jurisdiction is consistent with the requirements of the Due Process clause of the U.S. Constitution. Crane v Battelle, 127 FRD 174,176 (ND CAL 1989). In California, the longarm statute, Cal.Civ. P.sec.410.10 permits jurisdictional reach to the limits of the Due Process clause. LeDuc v. Kentucky Central Life Ins.Co., 814 FSupp 820,824 (ND Cal 1992). The court's inquiry is thus reduced to the question of whether the due process clause will permit defendants to be sued in this court. Alexander v Circus Circus Enterprises, Inc., 939 F2d 847,850 (9th Cir 1991), opinion withdrawn on other grounds, 972 F2d 261 (9th Cir 1992). The due process clause mandates that in order to

establish personal jurisdiction, defendant must have maintained such minimum contacts with the forum so that exercise of jurisdiction "would not offend traditional notions of fair play and substantial justice". International Shoe v Washington, 326 US 310, 316 (1945). Moreover the due process clause requires that the defendant has such minimum contacts with the forum state that he"should reasonably anticipate being haled into court there". Worldwide Volkwagon Corp. v Woodson, 444 US 285 297 (1980). The inquiry into minimum contacts must also focus on the activities of the defendant because the unilateral acts of the olaintiff cannot establish the minimum contacts with the forum. Thomas v Kadish, 748 F2d 276 (5th Cir 1984), cert denied, 473 US 907 (1985).

II

A

Plaintiff bears the burden of establishing a prima facie case that the court

possesses personal jurisdiction over defendant. Alexander, 939 F2d at 849-50. If the court finds general jurisdiction, the action can proceed in the forum even if the cause of action asserted by the plaintiff is wholly unrelated to the defendants' forum activities. Id at 850; Cubbage v Merchent, 744 F2d 665,667 (9th Cir 1984), cert denied, 470 US 1005 (1985). Plaintiff in this case, however, fails to establish grounds for either general or specific jurisdiction over defendants.

General jurisdiction requires a finding of continuous and systematic contacts usually acquired by defendants' business activity within the forum state. Asahi Metal Indust.Co. v Superior Court of Solano county, 480 US 102 (1987). Here, plaintiff submits no evidence that the defendant was engaged in any regular business activity. Currently, defendant (1) conducts no classes or other educational activities within California, (2)

has no employees working within California, (3) maintains no offices in California, (4) does not own any property in California, (5) does not possess a California mailing address or telephone number, (6) is not authorized to conduct its business,(education),in California,(7) has no agent for service of process in California,and(8) pays no taxes in California.

Although defendant maintains contact with current students and alumni within the state of California, these contacts are insufficient to constitute the continuous and systematic contacts which give rise to general jurisdiction. See, Gehling v St.George's School of Medicine, Ltd, 773 F2d 539, 542-43 (3d Cir 1985) (solicitation of students within the foreign state, residents of some number of students in foreign state, and media swings by school representatives through forum state to recruit students are not enough to satisfy general jurisdiction

requirements): Stainbrook v Kent, 771 FSupp 988,991 (D Minn 1991)(nonforum university's contacts with the forum were negligible and unrelated to the litigation). Here, defendants' contacts are almost identical to those of the defendant in Gehling, and are accordingly insufficient to warrant general jurisdiction.

B

Even if defendant has substantial contacts with the forum state, no evidence suggests defendants' purposeful availment of California law. Alexander,939 F2d at 850; LeDuc, 814 FSupp at 824. "[J]urisdiction cannot be predicated upon a person's unilateral act in bringing a defendant's product into the forum state, even though it was forseeable that the product might end up there." Resolution Trust Corp. v First of america Bank, 796 FSupp 1333 (CD Cal 1992) citing WorldWide Volkwagon Corp. v Woodson, 444 US 286,295-96 (1980). Also, "it is not enough that the

defendant can be shown to have placed its product into the stream of commerce with knowledge that the product may make its way to the forum state. There must be shown, beyond this, that the defendant has done some act'purposefully directed toward the forum state.'" Resolution Trust, 796 FSupp at 1336, citing Asahi, 480 US 102, 112 (1987). Plaintiff points only to acts done by herself and third persons within the forum which are inadequate to establish purposeful availment by defendant. Indeed, defendant made no attempt to direct their "product", (legal education) specifically at the state of California. Most law schools hope to prepare their students for the practice of law in any state. Nothing in the record, however, suggests defendants specifically tailored their legal education programs for the practice of law in California. Lacking any proof of substantial contact or purposeful availment by the defendants, a

finding of general jurisdiction must be denied. WorldWide Volkswagon Corp.v Woodson, 444 US 286 (1980).

III

A

The forum state's interests in the regulation of defendants' product is insufficient to convey personal jurisdiction over defendant. Plaintiff cites instances where California's special regulation of defendants' industry diminished the need for substantial contacts to obtain jurisdiction over an out-of-state defendant. McGee v International Life Insurance Company, 355 US 220 (1957). In McGee, the court upheld personal jurisdiction by the California courts over an out-of-state life insurance company which had refused to pay the policy value following the death of the insured California resident. In McGee, the policy holder was a California resident at the time of solicitation for the policy, paid premiums from

California, and died within the state.

The present case is distinguishable from McGee because plaintiff was not a California resident at the time of her application to defendant's school, or during any othe alleged actions by the defendants. While this court recognises the strong state interest in regulating both education and the practice of law, these purposes in no way justify a court sitting in California asserting jurisdiction over a law school outside California. The state may adequately satisfy whatever regulatory interest it has by requiring defendants' law school graduates to meet certain minimal standards for licensing to practice law in California. Accordingly, California has no interest in adjudication of this case for regulatory purposes.

B

Plaintiff also fails to allege a cause of action which would provide this court with grounds to satisfy the modern

criteria for specific jurisdiction over defendant. This court utilizes a tripartite test to determine specific jurisdiction. Lake v Lake, 817 F2d 1416, 1421 (9th Cir 1987).

> (1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or residents thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby involing the benefits and protections of its laws;
> (2) the claim must be one which arise out of, or relates to, the defendants' forum related activites; and
> (3) the exercise of jurisdiction must comport with fair play and substantial justice. Id at 1421.

C

As discussed in II, supra, the court

finds the defendant did not engage in any activites within the forum which demonstrate purposeful availment of the benefits and protections of California law.

D

Plaintiff also fails to allege sufficient facts to find that her claim arises out of, or relates to, defendants' forum related activites. The Ninth Circuit in Alexander noted, "this Circuit has already decided that the critical focus in the 'arising out of' prong is whether, 'but for' the defendants' forum related activities, the injury would have occurred; that is, whether the entire course of events*** was an uninterrupted whole which began with,and was uniquely made possible by, the [defendants'] contacts in [the forum state]." Alexander, 939 F2d at 853; citing Shute v Carnival Cruise Lines, 897 F2d 377,379 (9th Cir 1990), rev'd on other grounds, 111 S.Ct. 1522 (1991).

As dicussed in II,supra,defendants'

only apparent contacts with California are typical of out-of-state school activities such as student recruitment and communications with current students and alumni. The majority of olaintiff's claims, in fact, arose from defendants' alleged activity in Oklahoma. Plaintiff's claims of fraudulent misrepresentations to California residents, and systematic degradation of the California bar, are irrelvant for deciding personal jurisdicition in this litigation because they refer to the effects of the defendants' actions upon third parties.

Although plaintiff's claim of defamation in California by defendants may have arisen within the forum, the claim fails to demonstrate any purposeful availment by defendant. Plaintiff cites examples of specific jurisdiction over out-of-state defendants on the grounds that they had caused defamation within the state of California. Sinatra v.National Enquirer,

Inc., 854 F2d 1191 (9th Cir.1988); Quattrone v. Superior Court of Los Angeles, 118 CalRptr548 (CalApp 1975). Here, however, defendant had nothing to gain from mailing plaintiff's transcripts to California and, in fact, defendant only did so at the request of plaintiff. Defendants' compliance with such a request by plaintiff cannot be deemed purposeful availment of California law or a basis upon which defendant could reasonably anticipate being haled into court here. Therefore, this court rejects specific jurisdiction based on defamation within the forum.

E

Traditional notions of "fair play and substantial justice," Lake, 817 F2d at 1421, would not support forcing defendant to litigate in this forum. Given a defendant school's limited contact with practically every state, the court must remain especially watchful that the exer-

cise of jurisdiction in distant forums remains fair and reasonable. In this case, plaintiff received defendants' services in Oklahoma, and plaintiff was not a California resident when any of the events giving rise to her cause of action took place. Plaintiff apparently only filed suit in California because she attempted to transfer to a school within California, desired to practice law here, and currently resides within the state. Defendants would be unduly burdened by having to defend this suit in California, despite only negligible contacts here.

IV

Accordingly, plaintiff's action is hereby DISMISSED WITHOUT LEAVE TO AMEND for lack of personal jurisdiction over defendant, pursuant to FRCP 12(b)(2).

IT IS SO ORDERED.

Vaugn R.Walker
United States District Judge

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRANCES S. NORRIS,	)	No. 93-16647
	)	
Plaintiff-Appellant,	)	D.C.No.CV-93-1626-VRW
v.	)	
	)	
OKLAHOMA CITY UNIVERSITY; OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW,	)	MEMORANDUM
	)	
Defendants-Appellees.	)	

Filed April 12,1994

Submitted Apr.15,1994**

Frances S.Norris, a 1992 graduate of Oklahoma City University School of Law, appeals pro se the district court's dismissal for lack of personal jurisdiction if her action against the university and its law school alleging violations of Title IX of the Educational Amendments Act of 1972, 20 U.S.C. sec.1681-88 ("Title IX"), and supplemental state-law claims. We have jurisdiction under 28 U.S.C. sec.1291, and we affirm.

This court reviews de novo a district court's determination concerning the existence of personal jurisdiction where the underlying jurisdictional facts are undisputed. Bourassa v.Desrochers, 938 F.2d 1056,1057 (9th Cir.1991). Plaintiff has the burden of making a prima facie showing of personal jurisdiction. Id.

"Under Fed.R.Civ.P.4(e), a federal district court can assert personal jurisdiction to the extent authorized by a particular federal statute governing service of process for the action being heard...." T.M.Hylwa,M.D.,Inc. v Palka, 823 F.2d 310,312 (9th Cir.1987). Where no such statute exists or where diversity jurisdiction applies, the court can assert personal jurisdiction authorized by the law of the state in which the district court sits. See Core-Vent Corp.v Nobel Indus.AB,11 F.3d 1482,1484 (9th Cir.1993); Sinatra v National Enquirer,Inc. 854 F.2d 1191,1194 (9th Cir.1988).

Here, there is no specific authority governing Title IX governing service of process. See 20 U.S.C. sec.1681-88; cf.T.M.Hylwa,823 F.2d at 313 (nationwide service under ERISA);Bourassa, 938 F.2d at 1057 (nationwide service under federal securities law). Thus, the distict court's ability to assert personal jurisdiction over the appellees in this case rests on California law.See Core-Vent,11 F.3d at 1484.

California's longarm state permits personal jurisdiction to the extent permitted by the due process clause of the Constitution. See Cal.Civ.Proc.Code sec.410.10. As a result, we need only decide whether personal jurisdiction asserted in this case met due process requirements. Core-Vent, 11 F.3d at 1484.

On appeal, Norris does not dispute the district court's conclusion that the appellees did not have sufficient continuous and sustematic contacts with Califor-

nia to support the exercise of general jurisdiction. See id. at 1485. Instead, Norris contends that the district court erred by concluding that it lacked specific jurisdiction over the appellees based on Norris's defamation cause of action.

This court has developed a 3-part test to evaluate whetaher a court may exercise specific jurisdiction:

> (1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by he purposefully avails himself of the privilege of conducting activities in the forum thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the defendants' forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable."

Id. (quoting Lake v.Lake, 817 F.2d 1416,1421 (9th Cir.1987)).

The first element of the specific jurisdiction test is met where defendant's "only contact with the forum state is the 'purposeful direction' of a foreign act having effect in the forum state". Id. (emphasis in original). In a libel action, this first element is established when a defendant's "(1) intentional actions (2) expressly aimed at the forum state (3) caus[e] harm, the brunt of which is suffered--and which the defendant knows is likely to be suffered--in the forum state." Id.at 1486.

Here, Norris contends that the appellees directed their activites into California by publishing libelous statements about her grades and achievements in transcripts sent to three California law schools to which Norris applied for transfer in 1990. This contention lacks merit.

Based on our review of the record,

Norris has failed to make a prima facie showing that the appellees purposefully directed their actions to have effect in California. See id. at 1485; Bourassa, 938 F.2d at 1057. First, the appellees' actions were not "expressly directed" at California because, although the appellees sent the transcripts to a California audience, the transcripts themselves concerned Norris's grades and achievements in Oklahoma and were sent at Norris's request. See Core-Vent, 11 F.3d at 1486; See also Calder v. Jones, 465 US 783, 789 (1984)(California is the focal point both of the (defamatory) story and of the harm suffered"). Second, the brunt of the harm was not suffered in California. Norris was a resident of Oklahoma and a student of the Oklahoma City University Law School at the time the defamatory remarks allegedly were made[1/]. Thus, although the appellees' allegedly defamatory remarks allegedly were heard by three California

law schools, the effects of the harm were felt by Norris in Oklahoma, and Norris failed to meet the first element of the specific jurisdiction test[2/] See Core-Vent, 11 F.3d at 1486; see also Casualty Assurance Risk Ins.Brokerage Co. v Dillon, 976 F.2d 596,601 (9th Cir.1992)(libel effects felt where plaintiff resides and defamatory materials published).

Accordingly, because Norris did not make a prima facie showing of specific jurisdiction, we affirm the district court's dismissal for lack of personal jurisdiction [3/] . See Bourassa, 938 F.2d at 1057.

AFFIRMED.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir.R.36-3.

** The panel unanimously finds this case suitable for decision without oral argument.FRAP 34(a);9th Cir.R.34-4. Accordingly we deny Norris's request for oral argument.

1/ After graduation from law school in 1992, Norris moved to California and established her residence there.

2/ Because we conclude that Norris did not meet the first element of the specific jurisdiction test, we do not address the remaining elements. See Core-Vent, 11 F.3d at 1487. Nevertheless, we note that because Norris's defamation claim clearly "arose out" of the publication of the transcripts, her allegations establish the second element of the specific jurisdiction test. See id. at 1485. As to whether the exercise of jurisdiction over the appellees would be reasonable, however, we recognize that there would be a significant burden on appellees to litigate this action in California because with the exception of Norris herself, the majority of the witnesses and tangible evidence is located in Oklahoma, particularly as to her Title 9 claim. See Casualty Assurance, 976 F.2d at 600. Moreover, the appellees' attenuated contacts with California are insufficient to constitute purposeful interjection into California. See Core-Vent, 11 F.3d at 1488.

3/ We reject Norris's contention that the district court erred by dismissing her action without allowing her leave to amend. See Noll v. Carlson, 809 F.2d 1446,1448 (9th Cir.1987)(dismissal without leave to amend proper where complaint could not be cured by amendment.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Frances S.Norris, Plaintiff-appellant,	) No.93-16647
v	) D.C.#93-1626-VRW) Northern) California
Oklahoma City University and Oklahoma City University School of Law, Defendants-appellees.	) (San Francisco)) ORDER filed Oct.26,1994

Before: POOLE, BEEZER, and T.G.NELSON.

Appellant's request for publication of memorandum of April 5, 1994 is denied.

The panel has voted to deny appellant's petition for rehearing and to reject the suggestion for rehearing en banc. Accordingly, appellant's request for oral argument also is denied.

The full court has been advised on the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed.R.App.P.35.

Petition for rehearing is denied and suggestion for rehearing en banc is rejected.